

SUMMARY OF CONFLICTS LAWS

Conflicts of interest arise in a variety of ways under a myriad of laws in this area. To assist public officers in understanding and recognizing situations that may give rise to a conflict of interest, we have provided a summary of the conflicts of interest laws under the common law doctrine developed through precedential court decisions, the Political Reform Act of 1974 that was approved by the voters of the State of California, and conflicts of interest in contracts governed by Government Code Sections 1090 et seq.

The laws on conflicts of interest are complex, fact intensive, and generally require significant research and analysis. The duty is on the public officers to present information to the FPPC or the City Attorney concerning potential conflicts of interest so that advice can be provided. In matters involving potential conflicts, advance preparation is important to ensure that participation occurs in an appropriate manner.

A. COMMON LAW DOCTRINE AGAINST CONFLICTS OF INTEREST

In 1928, the California Supreme Court enunciated the common law doctrine against conflicts of interest as follows:

A public officer is impliedly bound to exercise the powers conferred on him with disinterested zeal, and diligence, and primarily for the benefit of the public.

Public officers are obligated by virtue of their office to discharge their responsibilities with integrity and fidelity, and are prohibited from placing themselves in a position where their private, personal interest may conflict with their official duties. Public officers should not be tempted to make decisions based on their own personal or pecuniary interests. The doctrine applies to situations involving nonfinancial personal interests.

A good example where a common law conflict of interest might lie is where a parent of an elected official owns a property as her sole and separate property and applies for a rezoning in order to develop an apartment project. The elected official may know of the parent's economic needs or know that eventually the elected official will inherit the apartment project. This most likely presents a common law conflict of interest. (*League of Cities, Providing Conflict of Interest Advice.*)

If a situation arises where a common law conflict of interest exists as to a particular transaction, the official is disqualified from taking any part in the discussion and vote regarding the particular matter. A violation of the common law doctrine may result in the unwinding of any transaction involved, disgorgement of profit and damages, as well as costs and attorney's fees.

Against this backdrop of the common law doctrine, a multitude of conflict of interest laws have been enacted. Among them include the Political Reform Act and Government Code Sections 1090 et seq., which include disclosure requirements, participation prohibitions, and other limitations.

B. Political Reform Act

The Political Reform Act of 1974 was enacted by the electorate to ensure that public officials perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Gov. Code §§ 81000 et seq.) Public officials include elected officials, employees, members of boards and commissions, and consultants who make or participate in the making of a governmental decision. The Political Reform Act prevents conflicts of interest in two ways, disclosure and disqualification.

Public officials may unknowingly find themselves not in compliance with the Act due to the comprehensive nature of the law. To assist public officials in recognizing when they may have a conflict of interest, state law requires that public officials disclose their financial interests in a form entitled “Statement of Economic Interests” (Form 700.) Public officials designated in the City’s Conflict of Interest Code must file these forms with the City Clerk every year, when assuming office, and when leaving office. These completed forms are available for public inspection during regular business hours to help inform the public on potential conflicts of interest. Public officials filing late forms may be required to pay \$10 for every day the form is late, not to exceed \$100.

If a public official has a conflict of interest, he or she may be required to disqualify himself or herself. In those instances where the public official determines not to act because of a disqualifying conflict of interest, the public official must disclose the financial interest by stating it on the record at a public meeting, and/or in writing to be kept in the agency’s official record. See Exhibit 5.

C. Conflicts of Interests in Contracts (Government Code Section 1090.)

Dating back to the 1850's, California has codified a common law prohibition against “self dealing” in contracts. This prohibition is commonly known as “the Section 1090 prohibition” and basically provides that City officers or employees cannot be financially interested in any contract made by them in their official capacity or by the body of which they are members. The basic prohibition is as follows:

Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their

official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

Virtually all board members, officers, employees and consultants are public officials within the meaning of Section 1090. If a violation of Section 1090 would result, the body or board is precluded from entering into the contract, even if the interested member abstains. A contract made in violation of Section 1090 subjects the officer or employee to a fine or imprisonment and to a perpetual disqualification from holding office in California. Moreover, a contract made in violation of Section 1090 is unenforceable and void.